

AMENDED IN ASSEMBLY JULY 12, 2005

AMENDED IN SENATE APRIL 27, 2005

SENATE BILL

No. 360

Introduced by Senator Florez

February 17, 2005

An act to ~~amend Section 22203 of the Financial~~ *add Chapter 3.2 (commencing with Section 1916.50) to Title 4 of Part 4 of Division 3 of, the Civil Code*, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Florez. Consumer loans: property sales and leasebacks.

~~The California Finance Lenders Law provides for the regulation of finance lenders by the Commissioner of Corporations and makes a violation of its provisions a crime. The law defines the term "consumer loan" to mean a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes.~~

~~This bill would expand the definition of the term "consumer loan" to also mean the sale of any real or personal property, the proceeds of which are intended by the seller for use primarily for personal, family, or household purposes, that includes the simultaneous leaseback to the seller of the same property.~~

Existing law regulates contracts, including loans of money and the interest rates that may be charged on those loans.

This bill would prohibit a person from making a loan to a consumer for personal, family, or household purposes and structuring the transaction as if it were a sale of property by the consumer to the lender, accompanied by specified lease, use, or purchase options. The

bill would impose civil and criminal penalties for a violation of its provisions.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 22203 of the Financial Code is~~
2 ~~amended to read:~~

3 ~~22203. (a) “Consumer loan” means a loan, whether secured~~
4 ~~by either real or personal property, or both, or unsecured, the~~
5 ~~proceeds of which are intended by the borrower for use primarily~~
6 ~~for personal, family, or household purposes.~~

7 ~~(b) For the purposes of this division, “consumer loan” shall~~
8 ~~also mean the sale of any real or personal property, the proceeds~~
9 ~~of which are intended by the seller for use primarily for personal,~~
10 ~~family, or household purposes, that includes the simultaneous~~
11 ~~leaseback to the seller of the same property.~~

12 ~~(c) For purposes of determining whether a loan is a consumer~~
13 ~~loan, the lender may rely on any written statement of intended~~
14 ~~purposes signed by the borrower or, in the case of a transaction~~
15 ~~described in subdivision (b), by the seller. The statement may be~~
16 ~~a separate statement signed by the borrower, or may be contained~~
17 ~~in a loan application or other document signed by the borrower.~~
18 ~~The lender shall not be required to ascertain that the proceeds of~~
19 ~~the loan are used in accordance with the statement of intended~~
20 ~~purposes. Nothing in this section shall authorize the taking of real~~
21 ~~property as security, except as specified in Section 22330.~~

22 ~~SECTION. 1. Chapter 3.2 (commencing with Section~~
23 ~~1916.50) is added to Title 4 of Part 4 of Division 3 of the Civil~~
24 ~~Code, to read:~~

CHAPTER 3.2. CONSUMER LOANS

1916.50. (a) For the purposes of this section, a “consumer” is a natural person.

(b) A person shall not make a loan to a consumer for personal, family, or household purposes and structure the transaction as if it were a sale of property by the consumer to the lender, accompanied by any of the following:

(1) A lease of, or license to use, the same or like property to the consumer.

(2) An option to the consumer to purchase the property.

(3) A lease of, or license to use, the same or like property to the consumer and an option to the consumer to purchase the property.

(c) A consumer may bring an action for the recovery of damages, equitable relief, exemplary damages, and attorney’s fees and costs for any violation of this section.

(d) A person who violates this section shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year, or by both fine and imprisonment for each violation.

(e) A person who violates this section shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney in a court of competent jurisdiction.

(f) If a transaction appears to involve a consumer’s sale of property to another and receipt of a lease of, or license to use, the same or like property, an option to repurchase the property, or both a lease or license to use the same or like property and an option to purchase the property, the transaction shall be presumed to be a loan transaction and in violation of this section. The presumption established by this section affects the burden of proof only in a civil action and may be overcome by clear and convincing evidence to the contrary.

(g) This section does not affect the rights of a bona fide purchaser for value who may acquire the purported interest of the lender without notice of the facts constituting a violation of this section.

1 (h) Any waiver of this section is void and unenforceable as
2 contrary to public policy.

3 (i) The rights, remedies, and penalties provided under this
4 section are cumulative to each other and to the rights, remedies,
5 and penalties provided under other law.

6 (j) Any action for a violation of this section shall be
7 commenced within four years of the date on which the violation
8 occurred.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the
14 penalty for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition of a
16 crime within the meaning of Section 6 of Article XIII B of the
17 California Constitution.